

Attachment 4b – Public comments on the draft NEPA Environmental Assessment of NOAA Fisheries' Proposed Evaluation and Pending Determination on the Ozette Lake sockeye salmon Resource Management Plan, and NOAA Fisheries' responses to those comments.

NOAA's National Marine Fisheries Service (NMFS) published notice in the Federal Register of its draft Environmental Assessment (EA) under the National Environmental Policy Act on its proposed ESA 4(d) Rule evaluation and recommended determination of the RMP on August 1, 2002 (67 FR 49905). The public comment period closed on September 3, 2002. NMFS received a request from the public on September 3, 2002, for additional time for reviewing the draft ESA and NEPA documents. In response, the public review and comment period for the documents was reopened and extended through October 21, 2002 (October 4, 2002, 67 FR 62229).

The notices requested public comments concerning NMFS' proposed evaluation and recommended determination of the RMP and the draft EA. NMFS has reviewed comments received by the closing dates. During the initial and extended review periods, NMFS received comments on its proposed valuation and recommended determination of the RMP and on the draft EA from one private citizen, the National Park Service (NPS), and the Makah Tribe. Similar comments have been combined where appropriate. Those comments that related directly to the draft EA are addressed below. Several of the comments were addressed in NMFS' final 4(d) evaluation and recommended determination and EA documents (Attachments 1 and 3), and in the proposed RMP.

Refer to the decision memorandum for references cited in this attachment.

Comment 1: Two commenters addressed information included in the Environmental Assessment (EA) regarding ESA listed terrestrial species distribution within the RMP action area, and indicated the need for additional effect evaluations of RMP activities on these species.

Response: Information included in the draft EA describing ESA listed terrestrial species presence, distribution, and life history within the action area was summarized from a species list previously assembled by USFWS (USFWS 1999). Information in the EA pertaining to Oregon silverspot butterfly occurrence, and Northern spotted owl and marbled murrelet occurrence and breeding strategies within the RMP action area has been augmented and/or revised based on more current information provided by NPS (NPS 2002). Consideration of potential noise and visual harassment effects on bald eagles and murrelets is now included in appropriate sections of the EA.

Comment 2: Concerns regarding the need to consider effects of the Ozette River counting weir on sockeye salmon predation by otters and harbor seals, and on boater access to the Ozette River were expressed by two commenters. Boat access was viewed by one commenter as important to allow for the assessment of log jam effects on lake elevation levels.

Response: As noted in NMFS' 4(d) evaluation document, scarring rate data collected at the weir site suggests that the majority of predation on sockeye is occurring in locations down-river from the weir site, including the nearshore marine area. Observations made at the weir site are

expected to help identify whether the weir is exacerbating sockeye salmon predation. This information is now included in the EA.

The effects of the Ozette River counting weir on boaters desiring to access the river directly from Ozette Lake, without the need to portage, was not considered in the draft EA. Notation and evaluation of this potential effect of the weir are included in the revised EA.

Comment 3: One commenter noted that annual visitation by people to the Ozette portion of Olympic National Park has increased from the level cited in the EA for the 1980s.

Response: The EA has been revised to include the 2001 visitation estimate provided by NPS for the Ozette region of Olympic National Park.

Comment 4: The Makah Tribe expressed concern regarding inclusion in the EA of language stating that fisheries were not authorized through the NMFS determination for the RMP. The Tribe noted that fisheries are not proposed as an action in the co-managers' RMP, and questioned the intent of the referenced language.

Response: NMFS understands that fisheries, while a potential long-term result of the proposed actions, are not included as an action in the RMP. The referenced language was intended to clarify the scope of NMFS' determination, which includes only hatchery, research, monitoring, and evaluation actions proposed in the RMP. The RMP refers to the co-managers' intent to reinitiate sockeye salmon-directed fisheries when the ESU was recovered. NMFS includes language to highlight that such fisheries were not being considered through the subject EA.

Comment 5: Two commenters identified a need for corrections to the EA. The commenters requested correction of the locations of proposed RMP hatchery and research programs, and of lake shoreline areas that are privately owned, on the map of the Ozette Lake ESU. One commenter questioned the accuracy of fishing regulations cited as in place for Olympic National Park. Involvement of the Shared Strategy group in Ozette Lake sockeye salmon recovery planning was also noted as in error.

Response: The map of the Ozette Lake sockeye salmon ESU (Figure 1) has been revised in response to the two comments. The referenced section describing Olympic National Park fishing regulations has been rewritten to clarify fishery management responsibilities within the ESU, and to include mention of fisheries allowed in the Ozette River. Although the Puget Sound/Olympic Peninsula TRT is reviewing recovery needs for the Ozette Lake sockeye salmon ESU with other listed salmon ESUs in western Washington, the Shared Strategy group will not be involved in recovery planning for Ozette Lake sockeye salmon. Mention of the Shared Strategy process has been removed from the EA. No changes in the analysis resulted from these corrections.

Comment 6: One commenter requested clarification regarding the action that is the focus of the NMFS NEPA evaluation.

Response: As noted in EA Section 1.1, the proposed action evaluated is NMFS' evaluation and determination as to whether the RMP addresses the criteria specified in ESA section 4(d) Rule Limit 6, and whether implementation of activities pursuant to the RMP would appreciably reduce the likelihood of survival and recovery of Ozette Lake sockeye salmon listed under the ESA.

Comment 7: Two commenters referenced effects evaluations included in the EA pertaining to log jam removal in the Ozette River. The Makah Tribe highlighted apparent correlations between log jam removals in the 1950s and salmon harvest declines, and the need for further study regarding the effects of log jam removal in the Ozette Lake watershed on salmon survival and productivity. The other commenter noted that identification of log jam removal as a factor that adversely affected salmon survival in the Basin is unsubstantiated, and that the potential positive effects of log jam removal on beach, river, and shoreline environments should be evaluated.

Response: NMFS concurs that further studies are needed to define the effects of log jam removal in the Ozette River on the quantity and quality of beach-spawning sockeye salmon spawning and incubation habitat, Ozette Lake levels, and the hydrologic characteristics of the Ozette River, Ozette Lake, and Ozette Lake tributaries. Comments made by the Makah Tribe regarding potential correlations between extant salmon harvest trends in the region and log jam removal events are acknowledged. The EA has been revised in the appropriate sections to reflect current uncertainty regarding log jam removal effects and the need for further evaluation.

Comment 8: One commenter indicated the need for further consideration of the aesthetic and physical environment effects of RMP research, monitoring, and evaluation activities on Ozette Lake shoreline private land-owners. Particular concerns were noise and boat wake effects (danger to other boaters and shoreline erosion) associated with research vessel use on Ozette Lake, and the aesthetic impacts of survey tape used to mark sockeye spawning locations and of currently unused fish pens.

Response: In response to concerns expressed by the commenter, potential aesthetic effects on Ozette Lake shoreline residents resulting from RMP research, monitoring, and evaluation activities are now included and considered in the EA (e.g., see section 4.2.3).

Comment 9: One commenter questioned WDFW's involvement in providing the RMP, with the Makah Tribe, for review by NMFS as a joint resource management plan.

Response: Under *United States v. Washington* (1974), the Makah Tribe and WDFW are co-managers of the anadromous salmon resource in the Ozette Lake Basin, including the listed sockeye salmon population, as described in the Background section of the EA. Fish management actions conducted within the region must therefore be jointly agreed to by the two co-managers prior to implementation of any plan affecting the Ozette Lake sockeye salmon population. In this case, implementation includes submittal of the jointly agreed RMP, then evaluation and determination of the plan by NMFS under the ESA 4(d) Rule Limit 6.

The joint RMP (submitted in the format of a HGMP) is the only co-manager plan under review by NMFS that addresses hatchery, research, monitoring and evaluation actions affecting the Ozette Lake sockeye salmon ESU. WDFW will be directly involved in the overall management of the programs as co-manager under the *United States v Washington* (1974) management framework. The section of the EA referenced by the commenter has been revised to clarify WDFW's role in submitting the RMP, and in managing the sockeye salmon resource.

Comment 10: One commenter questioned whether the EA assembled by NMFS in 2001 for the Ozette Lake sockeye salmon ESU 4(d) Rule (referenced as NMFS 2001a in the current EA) was provided for public review.

Response: The 2001 NMFS EA titled "Environmental Assessment - Application of ESA 4(d) Options for the Ozette Lake Evolutionarily Significant Unit of Sockeye Salmon" was not announced or made available for public review and comment prior to finalization.

Comment 11: One commenter asked for clarification in the EA regarding the specific parties provided copies of the draft RMP for review and comment prior to its formal submittal to NMFS for ESA review.

Response: The specific sentence referenced by the commenter has been revised to note that the Quileute Tribe was the only other "interested party" provided a copy of the draft RMP by the Makah Tribe for review and comment. The other resource management agencies provided draft versions of the RMP for review and comment - NPS, WDFW, and USFWS - were already noted in the EA.

Comment 12: One commenter objected to mention and evaluation of a program in the EA (a planned comprehensive recovery plan referenced in the RMP) that was not actually part of the actions proposed in the RMP.

Response: As noted in the EA, the Makah Tribe intends that hatchery supplementation will be part of a comprehensive recovery plan for sockeye salmon populations in the Ozette Lake Basin. This intention is included for context, not to provide or anticipate evaluation of its effects. The RMP under review by NMFS addresses only the sockeye salmon hatchery, research, monitoring, and evaluation components of the planned comprehensive recovery plan. The paragraph of concern has been revised to clarify that the referenced comprehensive recovery plan, when written, will be provided to NMFS as a draft for evaluation and determination through separate ESA and NEPA internal and external review frameworks.

Comment 13: One commenter questioned the relevance of the Treaty of Neah Bay to the EA, given closure of salmon fisheries which have prevented harvest sharing. The commenter also questioned the validity of a statement in the EA pertaining to historical salmon abundance.

Response: The Treaty of Neah Bay is appropriately included in the Background section, as the treaty is relevant to EA cultural, recreational, and economic environment effect considerations.

The Treaty is part of the baseline defining the Makah Tribe's reserved fishery and resource management rights, and Federal responsibilities for upholding those rights. These rights and responsibilities exist regardless of the current status of those fisheries reserved under the Treaty.

NMFS concurs that salmon population abundance status at the time of signing of the Treaty of Neah Bay is unknown. However, harvest data for fisheries occurring in the mid to late 1800s in surrounding Washington regions (e.g., the Columbia River and Puget Sound) indicates that salmon were much more abundant than at present. The establishment of a village site near the mouth of the Ozette River, and existing estimates from fish buyer records of Makah tribal fisheries harvests of many thousands of sockeye salmon in the early 1900s, strongly suggest that salmon were historically abundant in the Ozette Lake Basin, and that the fish were an important food source. Given reports by early explorers in the Pacific Northwest of the extensive use of salmon by Tribes as trade commodities in the Columbia and Fraser river watersheds (e.g., Roos 1991), it is likely that the Tribes inhabiting the Olympic Peninsula also used salmon for commerce. Language included in the EA pertaining to these issues has been revised to address the commenter's concerns.

Comment 14: One commenter interpreted the collection of 10 beach-spawning sockeye as an artificial propagation rather than a research-directed take action. The commenter expressed the concern that this collection was counter to the stated intent of the RMP of not using listed beach-origin sockeye salmon adults for supplementation purposes.

Response: The Makah Tribe proposes to collect up to 10 beach-origin sockeye salmon adults each year to provide eggs for use in studies to evaluate egg survival, relative to sediment levels, in the two known sockeye spawning areas in Ozette Lake: Olsen's Beach and Allens Bay. Alternatively, tributary-origin sockeye salmon may be used in place of listed adult beach-origin sockeye salmon as broodstock for this research. All eggs used in these studies will be incubated on their beach of origin (if spawned from beach-origin broodstock), and removed prior to hatching to assess survival rates. Any surviving eggs or fry will be sacrificed, and no eggs or juvenile sockeye salmon are proposed to be released into the natural environment through this research program. As proposed, this effort is clearly not designed to supplement the lake spawning sockeye salmon population, and it is consistent with stated RMP performance objectives. Clarifying language has been included in the EA section of concern.

Comment 15: One commenter was concerned that there were no plans to mark native beach-origin sockeye salmon to allow for their differentiation from hatchery-origin fish, and with additional handling effects that might be associated with such marking.

Response: There are no plans to differentially mark beach-origin sockeye salmon or to handle the fish for this purpose, because the proposed marking of hatchery-origin fish will allow for their differentiation. All hatchery-origin sockeye salmon will be otolith marked and a proportion will be adipose fin clipped to allow for beach-origin fish differentiation. A portion of the beach-spawning population will be marked as part of the external tagging study proposed to assess

predation rates and migrational behavior during adult migration, lake holding, and spawning. Handling effects expected as part of this latter research program are addressed in the EA.

Comment 16: One commenter questioned the accuracy of the Ozette Lake sockeye salmon ESU definition included in the “Physical Environment” section of the EA.

Response: The EA provides a description of the physical environment *within the range* of the Ozette Lake sockeye salmon ESU. This description does not mimic the legal definition of the ESU (defined in 64 FR 14528, March 25, 1999). Instead, the described range indicates features essential to sockeye salmon survival within and closely bordering the ESU. As noted in the EA, included as essential features within the ESU range are “nearshore estuarine and marine areas used by sockeye salmon on the Washington coast for juvenile emigration, early rearing, and returning adult migration.”

Comment 17: One commenter objected to citation of a study reporting spawning gravel improvement by creek or river-spawning salmon as support for positive effects on beach spawning area conditions that may be afforded by more abundant adult sockeye salmon.

Response: The Montgomery *et al.* (1996) study referenced in the EA is appropriately cited to indicate potential positive effects of beach-spawning sockeye salmon on gravel areas where eggs are incubated. It is highly likely that the physical act of redd excavation in beach spawning areas leads to removal of accumulated fine sediments, and coarsening of remaining gravel areas where eggs are deposited. An increase in the abundance of beach spawners would be expected to improve gravel and egg and fry survival conditions of broader areas of extant beaches.

Comment 18: One commenter emphasized the need to consider the cultural importance of salmon in the Ozette Lake Basin to non-Indian shoreline residents, who view the fish as important, when available, for consumptive and subsistence purposes.

Response: The section of concern to the commenter was revised to note the cultural importance of sockeye and other Ozette Lake salmon species for consumptive and subsistence purposes.

Comment 19: A concern expressed by one commenter was the need to consider cultural impacts on shoreline residents of the cessation of log jam removal programs in the Basin as a measure to retain natural conditions.

Response: Log jam removal is not a proposed RMP action, and the evaluation of the effects of log jam removal on lakeshore residents is not germane to the EA provided for public comment.

Comment 20: One commenter objected to the use of the term “private interest” in the EA when referring to land ownership and economic activities by citizens residing or conducting business within the Ozette Lake Basin. The commenter considers that real estate development identified as a potential land use in the EA along the Ozette Lake shoreline is not an option.

Response: The sentences of concern to the commenter have been revised to correct and clarify the discussion describing the local economic environment.

Comment 21: One commenter questioned potential consequences noted in the EA that would result from adoption of the No Action alternative.

Response: NMFS described effects on the environment that could potentially result from adoption of the No Action alternative. As described in the EA, NMFS assumes for the sake of this analysis that cessation or drastic reduction of the proposed activities would be the result of this alternative. NMFS concurs that it is possible that there could be other outcomes resulting from a determination not to approve the RMP under the 4(d) rule, but such other outcomes are speculative, and their outcomes are likely to be intermediate between the alternatives considered. As explained, the form of the No Action alternative is intended to provide the greatest possible divergence from the proposed action for the purpose of this analysis.

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